IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6848 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVISIONAL CONTROLLER G.S.R.T.C.

Versus

KANTIBHAI MATHURBHAI PARMAR

Appearance:

1. Special Civil Application No. 6848 of 2004

MS SEJAL K MANDAVIA for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/07/2004

ORAL JUDGEMENT

Rule. Mr.G.K.Rathod appears for the respondent and waives service of notice of rule on behalf of the respondent. At their joint request, the petition is

taken up for final disposal forthwith.

2. In the present petition, the petitioner has challenged the legality and validity of the award dated 20th January 2004 passed by the Presiding Officer, Labour Court, Nadiad. The short facts leading to the present petition are that the respondent workman was working as Driver with the petitioner Corporation. On account of remaining unauthorized absent, he came to be discharged from service by the order dated 13.3.97. This order was challenged by the respondent-workman before the Labour Court. The Labour Court came to the conclusion that the respondent workman was unwell for three months and had taken treatment as an outdoor patient. The Labour Court also observed that the respondent had sent leave report for a period from 1.8.96 to 4.9.96 since he was sick. The Labour Court also observed that the petitioner had never rejected the leave application of the respondent. The Labour Court, therefore, held that the petitioner had not succeeded in proving that the respondent was unauthorizedly absent for the period in question. Consequently, the Labour Court was pleased to set aside the order of discharge. However, in view of the fact that the petitioner had already reached the age of superannuation on 31.3.2001, it was pleased to direct that the respondent be paid 50 per cent of the salary for the intervening period and that entire period be treated as continuous for the service purpose.

3. I do not find any illegality committed by the Labour Court in its impugned award. The Labour Court has considered all aspects of the matter and has also taken into account the evidence produced on record and come to the conclusion that the respondent was not unauthorisedly absent for the period in question. The impugned award therefore does not call for interference. However, with respect to the question of backwages, the learned advocate for the respondent submits that the same may be modified suitably considering the facts and circumstances of the case. I find that the respondent did not have a completely clean record in the past and his default card suggests number of minor defaults in the past. Considering all the aspects of the matter, I am of the view that the ends of justice would be served by providing 25 per cent of the backwages to the respondent workman otherwise due and payable for the intervening period. The award of the Labour Court is accordingly modified by providing that the respondent will be entitled to continuity in service and 25 per cent of the backwages for the period in question. The amount of backwages may be paid over to the respondent as far as

possible within a period of three months from today.

3. With the above directions, the petition stands disposed of. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)
(vjn)